

## **MINUTES**

### **MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON FINANCE AND CLAIMS**

**Call to Order:** By **CHAIRMAN MIKE COONEY**, on March 4, 2005 at 8:00 A.M., in Room 317 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Mike Cooney, Chairman (D)  
Sen. Keith Bales (R)  
Sen. Gregory D. Barkus (R)  
Sen. John Cobb (R)  
Sen. John Esp (R)  
Sen. Steven Gallus (D)  
Sen. Ken (Kim) Hansen (D)  
Sen. Bob Hawks (D)  
Sen. Rick Laible (R)  
Sen. Lane L. Larson (D)  
Sen. Greg Lind (D)  
Sen. Don Ryan (D)  
Sen. Trudi Schmidt (D)  
Sen. Corey Stapleton (R)  
Sen. Jon Tester (D)  
Sen. Dan Weinberg (D)  
Sen. Carol Williams (D)

**Members Excused:** Sen. John Brueggeman (R)  
Sen. Bob Keenan (R)

**Members Absent:** None.

**Staff Present:** Prudence Gildroy, Committee Secretary  
Taryn Purdy, Legislative Branch

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: SB 319, 3/2/2005; SB 324, 3/2/2005  
Executive Action: SB 498; SB 319; SB 324

**HEARING ON SB 319****Opening Statement by Sponsor:**

**SEN. JON ELLINGSON (D), SD 49, Missoula**, opened the hearing on **SB 319**, Public financing for supreme court candidates. **SEN.**

**ELLINGSON** stated the bill passed Senate Judiciary and received a good vote on second reading on the floor of the Senate. The bill addresses a critical problem the Judiciary Branch is facing. The foundation of Montana's system of justice is the perception and the fact of impartiality and independence. It is the concept that a person appearing before a court can expect an impartial application of law regardless of who he or she is or regardless of what he or she represents. Rich or poor, weak or powerful, the law must be applied equally and impartially. This characteristic is under attack from the left and from the right and to the detriment of everyone. Over the past ten years, a number of states have provided for the option of public financing of political campaigns. It started in Maine and Maine continues to have public financing of all political campaigns. It has been adopted in Massachusetts and, to a certain extent, in Vermont. It has been adopted in Arizona. North Carolina is the first state to apply this exclusively to their judicial races. They have gone through one election cycle with this option in place. He played a DVD for the committee which described the North Carolina experience. **SEN. ELLINGSON** addressed the handouts presented to the committee. The first was a letter from North Carolina Supreme Court Justice Linda McGee, who responded favorably to this concept.

**EXHIBIT (fcs48a01)**

**SEN. ELLINGSON** added this is a non-partisan issue. Sen. John McCain, a staunch advocate of campaign finance reform, came to North Carolina to advocate on behalf of the concept. A second document was a fact sheet put together by the Montana Citizens' League that explained how the system would work.

**EXHIBIT (fcs48a02)**

**SEN. ELLINGSON** said he had an amendment that would eliminate the tax credits from the bill because of complexity. Funding would come from donations and the general fund. He submitted that the bill provides something that is good for justice, for the Supreme Court, and good for the administration of justice from both a conservative and a liberal perspective. Proponents in Senate Judiciary included former **Supreme Court Justice John C. Harrison**, former **Supreme Court Justice Skip Sheehy**, former **District Court Judge Gordon Bennett**, the **League of Women Voters**, **Sam Sanchez**

from the **Institute on Money and State Politics**, and **Neil Haight**, an attorney and director of many years of Montana Legal Services. **Chris Manos, State Bar**, appeared as an informational witness. He mentioned the **American Bar Association** has taken a strong stand in favor of public financing of judicial races. It is the position of the state bar that judicial elections should not be determined by contributors to those elections where those contributors may very well stand before those justices at a later time and ask that their interests be addressed. To do so invites cynicism on the part of the public, and invites scepticism that the judiciary is truly impartial and independent.

**SEN. ELLINGSON** introduced the amendment to simplify the funding source as general fund.

**EXHIBIT (fcs48a03)**

He indicated he did not sign the fiscal note because he thought the analysis was quite complex. The Budget Director assumed there would be three races for the Supreme Court in 2007; there are only two races for the Supreme Court in 2007. Fiscal assumptions were based on the amount of contributions and check-offs they thought would be made by individuals under the old funding mechanism, rather than concentrating on how much money would actually be spent in the races. He thought a better way to evaluate the fiscal impact is to look at the number of races there will be in 2007 and make an estimate from there. If both races for the Supreme Court in 2007 are contested, and if four candidates qualify for public financing, the total expenditures would be about \$500,000. This did not take into consideration gifts to the fund, fines, or other minor sources of revenue. Section 11, on page 7, of the bill provides for the amount of public funds that would be expended per candidate. In a contested general election, \$125,000 would be available for public financing for a candidate for the Supreme Court and \$150,000 if the candidate were the Chief Justice. This was exclusive of matching funds for independent expenditures. If two seats are up for election and there are four candidates, two for each of those seats, the total expenditure would be about \$500,000 or approximately \$250,000 a year. If more candidates qualify, or if there are matching expenditures, the expenditure will be greater. If some candidates want to use the existing system, it will be less. It is a new program, and experience in using it is needed before an accurate estimate can be made of the cost to the state. He suggested to the committee this is a modest expenditure to insure an independent judiciary and is not subject to influence and skepticism.

**Proponents' Testimony:**

**Keith Maristuen, State Bar of Montana**, presented testimony in favor of the bill. He stated he had familiarity with judicial campaigns. He read from written testimony.

**EXHIBIT(fcs48a04)**

**John Metropoulos, Attorney**, testified on his own behalf. He has been a lawyer for 17 years in Helena. He thanked **SEN. ELLINGSON** for bringing this bill and agreed the bill addresses a bipartisan issue. He considers his career to be a privilege. Judges he comes in contact with try very hard to be impartial and to render justice. That is not always the perception of the public, and having large amounts of money, especially soft money, flow into judicial races confirms in people's minds that judges can be bought. That has a very corrosive effect on the important role the judiciary plays in the system. He urged the committee to look on the expenditure favorably. The balance of power between the Legislature, the Executive, and the Judiciary, works very well if each power center plays its role. The judicial role is to be the final arbiter of what is constitutional and what is not. If the electorate believes that final arbiter is somehow prejudiced by the money received in the races, he believed the system would come unglued eventually. The investment is worth it to maintain the public trust, he maintained.

**Rita Blouke, Helena Area League of Women Voters**, presented written testimony.

**EXHIBIT(fcs48a05)**

She added that they appreciate **SEN. ELLINGSON'S** effort to simplify the fiscal note. She spoke in favor of the amendment. She noted they would endorse a bill for public funding of all campaigns.

**{Tape: 1; Side: B}**

**Opponents' Testimony:** None.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:**

**SEN. KEITH BALES** said he agrees with the principle but wondered why **SEN. ELLINGSON** had not made this mandatory. **SEN. ELLINGSON** advised there are first amendment issues if they make it mandatory. In *Bucky v. Vallejo* the Court equated the expenditure of money with free speech. He said he would like to make it mandatory, but has taken this as a more cautious approach. **SEN.**

**BALES** asked about a candidate who wants to spend an unlimited amount of their own money. **SEN. ELLINGSON** clarified the opponent would get public money up to 200% of the original amount granted. He hoped that would serve as a deterrent for the individual who is privately financed knowing that their initial expenditure will be matched. The same thing would apply for independent expenditures for interest groups that would otherwise be inclined to put money into the campaign thinking they can just roll over the public candidate. **SEN. BALES** expressed disagreement with the \$500,000 figure. He wondered if that is enough if there is a contested primary as well as a general election. **SEN. ELLINGSON** confirmed if there is a contested primary it will cost more. He tried to make the estimate based on past experience. In the last election, Justice Warner had no opposition. The other race was between Cindy Younkin and Justice Jim Nelson. If two people are running in the judicial race, both will make it through the primary so the primary is not contested. If each one of them wanted public financing, they would get \$125,000 each. He did not know what the first two years of this would cost, but he thought those were reasonable examples.

**SEN. DON RYAN** asserted there are perceived advantages to an incumbent. For judicial races, there are no party primaries. There are open primaries that narrow the race to two. If there are two seats open next time, there could be as many as twelve people filing. He wondered if there would be public financing for both the primary and the general election. **SEN. ELLINGSON** referred to page six, New Section 11. It is conceivable that twelve people might qualify for public financing, but he didn't think so. He stressed how much work it is to get 500 contributors.

**SEN. GREG BARKUS** advised the bill says in the last twenty days before the relevant campaign period the non-participating candidate cannot receive any additional funding. He asked if that violates the case law that **SEN. ELLINGSON** cited. **SEN. ELLINGSON** advised that **SEN. JEFF ESSMANN** raised that question with him following the discussion on the floor of the Senate. This section came directly from the North Carolina law and he thought it was a good idea. There are first amendment issues and the amendment strikes that from the bill. **SEN. BARKUS** asked if there are requirements for a candidate to disclose whether they are participating or non-participating. **SEN. ELLINGSON** responded there is a mechanism for qualifying and, once a candidate has qualified and has applied, they are certified and get the amount of money they are entitled to for the campaign. The money goes into an account, which the candidate has access to, and it can only be used for purposes of campaigning. Any amounts left over go back into the general fund. **SEN.**

**BARKUS** pointed out an error in the fiscal note under the assumptions where it refers to Section 12 but is actually Section 21.

**SEN. JOHN COBB** questioned whether that much money is needed in the primary if there are only two people running. More could be given in the general election. He added that most people get their money from lawyers when they first start. He thinks that looks bad and wondered about forcing the Bar Association to charge fees to fund this program; he thought the \$100,000 each year could be raised. The Bar Association could say it is improper to give money to judges running for the Supreme Court. If fees can't be raised, then he thought they ought to donate to the general fund instead of giving directly to judges. He favored the idea that none of the general fund money would be given if there are no donations. **SEN. ELLINGSON** responded if there are two candidates running, that is not a contested primary. He thought fees on lawyers would be popular in the Legislature, but **Chris Manos, State Bar Association**, reminded him about invading the province of the Supreme Court in the regulation of lawyers. He thought it would create more problems than it was worth. He didn't want to come forward with something that had that kind of problem. **SEN. COBB** said he was trying to figure out how to save the bill. Most of the donations will probably have to come from lawyers anyway, even though it is not mandatory. **SEN. ELLINGSON** said he wouldn't want to see that contingency in the bill but would go on the road to see how much money could be raised if this passes. The Bar Association supports it and he thought individual lawyers ought to support it too. Whether they do or not, he felt it was good for government and for democracy in Montana.

**SEN. RICK LAIBLE** advised one of the concerns about the bill originally was third party contributions. **SEN. ELLINGSON** replied the bill addressed third party donations in its original form. Third party contributions are independent expenditures as defined in the bill starting with Section 14. On page 10, line 17, there is a provision for matching funds so that the person who is publicly financed is not at a disadvantage. **SEN. LAIBLE** asked, if someone opts out of the program and has limited amounts of funds coming in, if there is a mechanism in the bill to help the one that has opted into the public financing program. **SEN. ELLINGSON** stated this is to help the person who has opted into the public financing program and also to serve as a deterrent to third party expenditures, which are having a detrimental impact on the public perception of the judiciary.

**SEN. DAN WEINBERG** asked if a candidate wanted to take the president of the Bar Association on a Caribbean cruise, if that

could be a campaign-related expense. **SEN. ELLINGSON** said no. **SEN. WEINBERG** asked if the bill says what is and is not a campaign-related expense. **SEN. ELLINGSON** thought that was either already in statute or could be handled by rule. **SEN. COBB** thought it relates back to Title 13 election law where there ought to be definitions about what is an expense or not. **SEN. ELLINGSON** said he is committed to definite language about what constitutes a campaign expenditure. Just because someone qualifies for public financing, doesn't mean they can take a cruise on public money. **Cory Higgins, Commissioner of Political Practices**, testified that nothing currently defines expenditures. Contributions are defined as an attempt to influence the outcome of an election. **SEN. WEINBERG** thought the bill is a great idea but worries about what candidates would spend money on. The cruise is an extreme example, but it could be fancy dinners, sporting events, etc. He didn't think the public would like their money spent on that. He wondered if there is a way to construct rules to make those expenditures reasonable. **Mr. Higgins** replied, yes, and said he would be happy to work on that. He recommended codifying as much of that as possible and leaving the rule-making for implementation rather than the definition of expenditure. **SEN. ELLINGSON** referred to page 7, Section 12, of the bill which said public funding may be used only for campaign-related expenses. Subsection 2 said it may not be expended in violation of law or for personal family or business loans, expenditures, or debts. He thought that clearly indicated the intent of the bill. He was willing to tighten it up if that was the wish of the committee.

**SEN. STEVE GALLUS** asked **Mr. Higgins** if two individuals in a primary for the Supreme Court would not legally be in a contested race. **Mr. Higgins** said, yes.

**SEN. BARKUS** asked if anything in the bill prohibits an uncontested candidate from having a friend file, creating a contested race for the purpose of getting additional dollars. **SEN. ELLINGSON** questioned why the extra money would be needed if the race was uncontested. That would be in conflict with Section 12. In two years, they can address any issues that arise.

**CHAIRMAN MIKE COONEY** asked, if a candidate filed, if he would have to raise the 500 five dollar contributions in order to qualify for the funding. **SEN. ELLINGSON** said that is correct. If the candidate didn't want to qualify for the funding, they could just file and then the publicly financed candidate would get more money and have to deal with a contest that he or she otherwise wouldn't. **CHAIRMAN COONEY** said it seemed to him that this is similar to the public financing of the presidential

racers. Candidates can opt in or opt out and there is a qualifying process of raising certain amounts of dollars in order to demonstrate they are a legitimate candidate. There are regulations on the amounts, etc. **SEN. ELLINGSON** indicated there is an important distinction between the public financing provided to presidential candidates and that is the matching funds. The problem that faced presidential candidates in the last go-round, if they opted to accept public financing and the other side did not, was they couldn't respond if the other side spent millions of dollars more than the publicly financed candidate. Here, the publicly-financed candidate has the ability to get matching funds. He advised that is a critically important element absent from the public financing available at the national level. It makes the candidates who opt into the publicly-financed method viable, whereas at the national level they couldn't be a viable candidate if they were going to be outspent two to one. **CHAIRMAN COONEY** advised there are always ways of manipulating systems to make them unfair. Currently, in the legislative races, candidates are restricted to the amount of money that can be collected from individuals. It differs if a candidate has a primary. He thought that is a system that could be manipulated. Things like that can already happen in the current system no matter how tight it was planned. **SEN. ELLINGSON** acknowledged it will be a continuing challenge to deal with the problem of money in politics.

**SEN. DON RYAN** said he had a conversation with the Governor of Arizona about public financing. The president came to Arizona and held a fundraiser for her opponent that generated about \$700,000, which the state of Arizona matched. SB 319 addresses those issues. By having to go out and qualify by getting 500 people to contribute to a campaign, a lot of the impact of outside influences will be reduced. **SEN. ELLINGSON** agreed it does.

**{Tape: 2; Side: A}**

**SEN. JOHN ESP** asked, if three days before the campaign is over, an independent organization puts a bunch of money into the campaign, if the money is immediately available for the candidate. **SEN. ELLINGSON** said the money needs to be made available immediately upon notification. Section 13 requires that excess campaign contributions by a non-participating candidate have to be reported within 48 hours of receipt. He thought there is the same kind of requirement for independent expenditures. It has to be nimble in order to respond to it. It will not be perfect. One reason he wanted to have a prohibition on additional contributions within the last twenty days was to



prevent somebody from being surprised. He agreed there was potential for a problem with that and his amendment takes it out.

**SEN. WEINBERG** asked if there is any prohibition regarding people outside the state meeting those minimum requirements. **SEN. ELLINGSON** indicated the five dollar contributions have to be from in-state residents.

**SEN. CORY STAPLETON** asked if the qualifying contribution has to be exactly five dollars, no more and no less. **SEN. ELLINGSON** said if somebody wants to make a contribution to the public financing fund somebody can do that. The qualifying contribution has to be five dollars and no more. There has to be 500 contributions of five dollars. If there is a ten dollar contribution, there is no additional credit. **SEN. STAPLETON** asked if any additional money flows over. **SEN. ELLINGSON** said it flows into the fund; a candidate can't spend more than \$2500 during the qualifying period. A candidate can't spend more than \$50,000 in the qualifying period and expect to get public financing.

**CHAIRMAN COONEY** asked **Mr. Higgins** how much a Supreme Court Justice receives from a political contributor currently. **Mr. Higgins** stated it is \$250. **CHAIRMAN COONEY** asked if a bill by **SEN. JOE BALLYEAT** changed that limit to \$130. **Mr. Higgins** replied that was for Associate Justice.

**SEN. STAPLETON** asked at what point does a candidate choose to not be publicly funded and if it is reset after the primary. **SEN. ELLINGSON** referred to the definition section of the bill. The period of time in which to qualify for public financing begins 210 days before the primary election. A candidate can't go through the primary as a privately financed individual, decide to collect five hundred qualifying contributions, and expect public funding.

**Closing by Sponsor:**

**SEN. ELLINGSON** advised this is a complex bill. He stated his commitment to the notion of an independent judiciary that is impartial and is not influenced by various groups. This is a model bill, with some minor modifications, that started in Maine. Maine utilized it for a number of years and it has been used in North Carolina. Many of the issues that have been brought up have been shown not to come to the fore. If the bill passes, two years from now if there are problems they can tinker with it. He contended this is a modest amount to commit towards the continuing independence and impartiality of the judiciary.

**CHAIRMAN COONEY** observed if the committee acts favorably upon the amendments, they will request a new fiscal note. **SEN. ELLINGSON** concurred.

**EXECUTIVE ACTION ON SB 498**

***{Tape: 2; Side: A; Approx. Time Counter: 11.2}***

**Motion:** **SEN. BALES** moved that SB 498 DO PASS.

**SEN. BALES** advised the bill is a loan program handled by the Department of Natural Resources (DNRC). The bill raises the amount loaned to private ditch companies from \$300,000 to \$3 million. He noted in the hearing on the bill he asked **John Tubbs** of DNRC about raising the limit on loans to individuals for irrigation projects. The \$200,000 limit was set in 1981. With the concurrence of **Mr. Tubbs**, he came up with an amendment.

**Motion:** **SEN. BALES** moved that SB049801.ATP BE ADOPTED.

**SEN. BALES** said the amendment raises the \$200,000 limit to \$400,000. Since this bill went into effect, considering the consumer price index, the same amount of dollars would be \$431,000. Several loans are at the limit where they can't borrow any more. This would be a great tool to develop irrigation in the state and add value to agriculture.

**Discussion:**

**SEN. GREG LIND** asked **SEN. BALES** if he discussed the default history of that portion of the loan program. **SEN. BALES** advised there were some problems early, but as of late the program is running smoothly.

**SEN. SCHMIDT** asked about the list of loans. **SEN. BALES** advised the list showed four loans that had been in default; there were no losses. **SEN. SCHMIDT** asked **Mr. Tubbs** about the \$400,000 limit and the defaults. **Mr. Tubbs** advised the average loan was just under \$100,000. Since 1981, there have been fifteen loans at \$200,000. Since 2000, half a dozen have borrowed the full amount of \$200,000. They can no longer borrow until they pay those loans down. The Water Development Act was passed in 1981 and the Legislature chose to provide a \$200,000 private loan cap in statute. The agency makes the decisions. A legislative body cannot constitutionally award grants or loans to private entities. They can give the authority to an agency to administer a program. Less than 1% of the loans have gone into default and they have only lost money on three. Those loans were made

between 1986 to 1988. The program was then transferred to his division. **SEN. SCHMIDT** thought if this amendment were to pass, there would be more risk of default. **Mr. Tubbs** said if they approved a loan in excess of \$200,000 and towards the \$400,000 the state would be more exposed. Marginal ranch/farm operations would have a hard time securing a \$400,000 debt. The borrower has to submit a loan application and it is evaluated. They look at cash flow, assets, and liabilities. The burden of the increased amount on the Department would be to do a good job of lending. The borrowing community knows the rules and there are not many applications from people who cannot afford to borrow the money. The Department has a good relationship with the agricultural community. Many times the agricultural banker is the one filling out the application.

**SEN. LANE LARSON** referred to previous testimony by **Mr. Tubbs** about people being land rich and cash poor. He expressed concern about hundred-year-old ditch companies and whether there will be money left in the program if the limit is raised. **Mr. Tubbs** did not think that is a risk in the upcoming biennium. Because of the increased loan volume, both with this amendment as well as the bill itself, there is a high likelihood they will hit the \$30 million cap sooner. He recognized the infrastructure of the ditch companies is getting old, but thought a limited number of borrowers would seek a \$400,000 loan. He said the department may come back in subsequent sessions to ask for additional authority. The program started with \$10 million, was increased to \$20 million and then to \$30 million.

**SEN. LIND** asked if the program reports to an interim committee. **Mr. Tubbs** said they have a statutory requirement to report to the Environmental Quality Council. The council focuses more on projects than on the finance aspect. The program also reports to the Legislature.

**Vote:** Motion that AMENDMENT SB049801.ATP BE ADOPTED passed 16-1 by voice vote with **SEN. SCHMIDT** voting no.

**Motion:** **SEN. BALES** moved that SB 498 DO PASS AS AMENDED.

**Discussion:**

**SEN. WEINBERG** expressed concern about the \$3 million limit. There are several variables that exist when banks lend money. They consider the amount, the risk factor, the rate, and the feasibility of repossessing the collateral. He didn't think the state could afford to lose many \$3 million loans. What distinguishes this program from other lending programs is this program takes on higher risk. The rate is competitive or low.

The feasibility of repossessing ditches or dams is not there.  
The State of Montana does not want to take on these projects.

**{Tape: 2; Side: B}**

He thought the one variable that can be controlled is the amount of the loan. There may be a lot of projects placing demands on the program. He wanted to reconsider the \$3 million amount.

**SEN. BALES** realized **SEN. WEINBERG'S** concern about feasibility. He referred to the testimony of the ditch company that they intend to raise rates to pay the amount needed to service the debt. He referred to the comment of **Mr. Tubbs** that the department looks carefully at the ability of the company or individual to repay the debt and the debt service. The alternative is for the ditch company to become a public company and get a grant; then the state will pay it all. He acknowledged there is some risk but expressed confidence in the Department.

**SEN. COONEY** asked if **SEN. WEINBERG** had an amendment.

**Motion:** **SEN. WEINBERG** moved TO AMEND THE ALLOWABLE LOAN AMOUNT DOWN FROM \$3 MILLION TO \$2 MILLION.

**SEN. BOB HAWKS** asked **SEN. JERRY BLACK** to comment on the impacts of this amendment on the projects he is familiar with. He recalled this includes the water supply for the town of Conrad. **SEN. BLACK** maintained the \$3 million is appropriate. This would be half of the \$6 million needed. He acknowledged the risk is higher but expressed faith in the DNRC. They have been very successful in awarding these loans. The necessary financial statements have to be filed to show a borrower is able to repay. The Department has an excellent history as does the Pondera County Canal and Reservoir Company (PCCRC), who have been in business for over 100 years. The very fact that collateral is a problem, is the problem with securing private financing. Not many banks want to own a dam and they can't find many buyers for it. That is why this type of loan is available so they are able to get the financing that is necessary. If the dam fails, it would be much worse and more costly. The entire community of Conrad gets its water supply from that dam. The 80,000 acres under irrigation provides tax revenue to Pondera County and to the state. He thought they are exposing themselves to a greater risk by not providing funding for these types of projects. The other option is for the company to become a public company. The state would then be providing grants and maybe paying for the entire project. He thought the bill has strong merit and the difference between \$2 million and \$3 million does not provide that much comfort. It does not answer the need of the problem. He complimented **SEN. BALES** on his work on the amendment and

expressed support. He hoped the committee would support the \$3 million. He had meetings with the PCCRC and DNRC; they feel that would be an appropriate amount and would help them in this situation.

**SEN. LIND** asked what would be the appropriate finance committee for this program to report to. He thought the increase in the loan program deserved some scrutiny. **CHAIRMAN COONEY** advised **Mr. Tubbs** reports on an annual basis and there is an annual audit. **Taryn Purdy** commented if they wish to add an additional required review it can be a condition of DNRC's appropriation in HB 2 that they report to either the finance committee, the audit committee, or the interim committee that oversees the DNRC. **SEN. BALES** advised a bill by **REP. DEBBIE BARRETT** will require the departments to report their financial situations, where they have transferred money, etc.

**SEN. WEINBERG** asked if this program is a loan program or a grant program. If it is a loan program, then the tail is wagging the dog. They are looking at the needs of this project and adjusting the amount to loan according to their needs. If it is a grant program, they could do that. He suggested they act like a bank and not be driven by amount of the need. **CHAIRMAN COONEY** commented that the testimony of **Mr. Tubbs** indicated that even if the level is raised from \$300,000 to \$3 million, that he would still use the same scrutiny. It does not guarantee the borrower would automatically get the \$3 million. It just gives the Department more latitude to address larger problems. They will only fund a project if the project demonstrates they can properly pay the loan back. The bill does not authorize a \$3 million loan; it authorizes an extension of the amount of money that is available. He contended the Department is doing very well. **SEN. WEINBERG** agreed they are doing a good job. He disagreed that they are not authorizing \$3 million loans.

**SEN. CAROL WILLIAMS** said she understood what **SEN. WEINBERG** is trying to do but didn't think as a committee that they can be picking numbers out of the air without anything to back it up. She indicated she would probably vote against the amendment. She thought they had a good hearing, they described the need, they described the problem, and all the issues related to fixing these projects. The cost to not do it in a timely way and have something fail would be more expensive. She thought it was a reasonable thing to do.

**SEN. ESP** asked **SEN. WEINBERG** to withdraw his motion so he could offer a different approach to the concern. His approach would be to sunset the extension of the \$3 million in two years.

**SEN. WEINBERG** withdrew his motion in support of **SEN. ESP'S** idea.

**Motion:** **SEN. ESP** moved **TO SUNSET THE EXTENSION TO \$3 MILLION TO THE END OF THE BIENNIUM.**

**SEN. COBB** said if the company gets a \$3 million loan, he wondered about the loan expiring in two years. **SEN. ESP** thought it could be done.

**SEN. JOHN BRUEGGEMAN** advised he would vote against the sunset amendment. He thought one of the best resources in the state is done with the water projects. He trusts the department. If anyone has a question about the solvency of the program, they should ask the Legislative Audit Division to conduct an audit down the road. Continually tacking on contingencies and sunsets clutters the code. He preferred to vote up or down on the bill.

**CHAIRMAN COONEY** asked **Mr. Tubbs** how he would see the sunset provision working and to address the question raised by **SEN. COBB**. **Mr. Tubbs** hoped, with the sunset provision offered by **SEN. ESP**, that the opportunity to borrow as much as \$3 million under the other provisions of the statute would exist for a two-year period. Once they have closed an agreement with the borrower, they have a right to that agreement.

**SEN. ESP** asked about the workability of the concept. **Mr. Tubbs** thought they could live with a sunset but thought **SEN.**

**BRUEGGEMAN'S** point should be well taken. The reservoir company is proud of being in business for 100 years. Up until the middle of January, his counsel to them was if they want large grants and loans from state and federal government, to become a governmental entity. The bill is making a policy choice--whether the access to capital from government is strictly through public status or if there is enough capacity in the state to allow private borrowing of this magnitude. He did not think the credit risk with the PCCRC is high. He worked with them for twenty years. They had a million dollar loan in 1987 before the code changed. They have property and a water right security. The ditch company that he doesn't know and that is marginal will be the challenge to the Department.

**Vote:** Motion to amend SB 498 carried 12-7 by roll call vote with **SEN. BALES**, **SEN. BRUEGGEMAN**, **SEN. HANSEN**, **SEN. KEENAN**, **SEN. LARSON**, **SEN. RYAN**, and **SEN. STAPLETON** voting no. **SEN. TESTER** voted yes by proxy.

**Motion/Vote:** **SEN. BALES** moved that SB 498 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 319

*{Tape: 2; Side: B; Approx. Time Counter: 26.2 - 27.6}*

Motion: SEN. GALLUS moved that SB 319 DO PASS.

Motion/Vote: SEN. GALLUS moved that AMENDMENT SB031902.AVL BE ADOPTED. Motion carried unanimously.

Motion: SEN. GALLUS moved DO PASS CONSIDERATION ON SB 319.

CHAIRMAN COONEY stated without objection so ordered. A new fiscal note will be requested.

EXECUTIVE ACTION ON SB 324

*{Tape: 2; Side: B; Approx. Time Counter: 28.2 - 29.6}*

Motion/Vote: SEN. WILLIAMS moved that SB 324 DO PASS. Motion carried 18-1 by voice vote with SEN. KEENAN voting no.

*{Tape: 3; Side: A}*

The meeting was adjourned.

**ADJOURNMENT**

Adjournment: 11:20 A.M.

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SEN. MIKE COONEY, Chairman

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PRUDENCE GILDROY, Secretary

MC/pg

Additional Exhibits:

**EXHIBIT ([fcs48aad0.TIF](#))**